IN THE SUPREME COURT OF IOWA
Supreme Court No. 23-2114
Polk County Nos. FECR372327 & FECR372333

STATE OF IOWA,
Plaintiff–Appellant,

vs.

CHARLES AARON AMBLE and
JOHN JOSEPH MANDRACCHIA,
Defendants–Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE MICHAEL D. HUPPERT, JUDGE

BRIEF FOR APPELLANT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Did law enforcement's seizure and search of garbage outside for collection violate Defendants' rights under the Iowa Constitution's article I, section 8 considering Iowa Code section 808.16 provides: 1) garbage left for collection is abandoned; 2) Iowans have no privacy expectation in such garbage; 3) municipal ordinances cannot restrict law enforcement trash pulls or create privacy expectations in garbage; and 4) law enforcement trash pulls are not trespasses?

II. If *State v. Wright's* interpretation of article I, section 8 of the Iowa Constitution prohibits the garbage seizure and search here, and Iowa Code section 808.16 does not change that result, should the Court overrule *State v. Wright*?

ROUTING STATEMENT

This court granted discretionary review of a district court order suppressing evidence. Order, Jan. 18, 2024.

The Court should retain this case because it presents a substantial constitutional question as to the validity of Iowa Code section 808.16. Iowa R. App. P. 6.1101(2)(a). The district court held section 808.16 is unconstitutional under *State v. Wright,* 961 N.W.2d 396 (Iowa 2021). But the district court erred. This Court should conclude both that the statute is facially constitutional and so was its application here. Iowa R. App. P. 6.1101(2)(a).

In the alternative, if the statute is unconstitutional under *Wright*, the State asks the Court to overrule that decision. Iowa R. App. P. 6.1101(2)(d), (f); *see State v. Eichler*, 83 N.W.2d 576, 578 (Iowa 1957) ("If our previous holdings are to be overruled, we should ordinarily prefer to do it ourselves."). Only claims raised under the state constitution are presented because Defendants did not invoke the Fourth Amendment in district court.

NATURE OF THE CASE

Before 2021, garbage left on the curb for collection enjoyed no constitutional protection from warrantless searches by law enforcement. *California v. Greenwood*, 486 U.S. 35 (1988); *State v. Henderson*, 435

N.W.2d 394 (Iowa Ct. App. 1988). In 2021, this Court decided three cases departing from that long-standing rule. *State v. Wright*, 961 N.W.2d 396 (Iowa 2021), *State v. Hahn*, 961 N.W.2d 370 (Iowa 2021), and *State v. Kuuttila*, 965 N.W.2d 484 (Iowa 2021). The primary decision explaining the jurisprudential change, *State v. Wright,* concluded warrantless trash pulls violate the Iowa constitution in two ways. First, if positive law restricts trash collection to authorized trash collectors, an officer collecting trash commits a trespass. And second, that restrictive positive law creates a reasonable expectation of privacy in the view of the person placing the trash for collection. *See Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

Taking this Court's constitutional concerns seriously, the Legislature responded to *Wright* by enacting Iowa Code section 808.16. The statute has four main components.

First, section 808.16 declares that no person has a reasonable expectation of privacy in garbage placed outside the home as a matter of Iowa public policy. Iowa Code § 808.16(1).

Second, the statute preempts municipal waste collection ordinances to the extent those ordinances purport to create a privacy right, limiting

their content to public health and cleanliness rather than protection of privacy. *Id.* § 808.16(2).

Third, the statute clarifies that garbage placed outside the home for waste collection is abandoned as a matter of law. *Id.* § 808.16(3).

And fourth, the statute authorizes peace officers to search or seize garbage placed outside the home for routine collection in publicly accessible areas without a warrant. *Id.* § 808.16(4).

The Legislature thus accepted this Court's detailed historical analysis explaining that positive law governs whether, without a warrant, a law enforcement officer may search or seize garbage left for collection. Working within *Wright's* framework, section 808.16 allows law enforcement officers to do so.

But the district court here suppressed evidence because the police supported a search warrant with information obtained by warrantless seizures of garbage left for collection outside Defendants' residence. D0024 (Amble FECR372327) Order Granting Mot. to Supp. at 7 (11/13/23); D0026 (Mandracchia FECR372333) Order Granting Mot. to Supp. at 7 (11/13/23). To reach its conclusion, the district court held section 808.16 is facially unconstitutional. *Id.* The district court concluded that probable cause for

the search warrant was tainted and so was evidence obtained by the search of the residence. *Id.*

The State asks this Court to reverse the district court's suppression order and remand for further proceedings because section 808.16 is constitutional and the trash pulls did not violate Defendants' article I, section 8 rights under the Iowa Constitution.

STATEMENT OF THE FACTS

In June 2023, Urbandale Police Officer Brad Frick was working while assigned to the Mid-Iowa Narcotics Enforcement (MINE) Task Force. D0037 (Amble FECR372327) D0039 (Mandracchia FECR372333) Exh. 100 - Search Warrant App'n at 7 (05/28/2024). He received information from a concerned citizen about possible narcotics activity at a home in the 2000 block of 38th Street in Des Moines. *Id.* During June and into July, Frick investigated. *Id.* at 9–10. He learned that Charles Amble, Teresa Amble,[1] and John Mandracchia lived at the address. He learned that Teresa owned the home and utilities were in Amble's name. *Id.* He found no criminal history for Mandracchia or Teresa but learned Amble had two 2011

[1] The State will refer to Teresa Amble by her first name due to her shared last name with Defendant Charles Amble.

convictions for failure to register as a sex offender. *Id.* at 9. Frick learned what cars the three targets owned and drove. *Id.* at 10.

During July 2023, Officer Frick retrieved trash bags from a trash receptacle set on the outside curb for collection at the 38th Street address. *Id.* at 8–12. In the trash bags, Frick discovered evidence of the use and distribution of controlled substances by Amble, Teresa, and Mandracchia. *Id.* at 7. On July 3, Frick located in one white trash bag Amble's Walgreens paperwork as well as baggies that field tested positive for marijuana, including one with THC labels meant to package a pound. *Id.* at 11. Frick recognized that having both a pound-sized package of marijuana as well as smaller baggies indicated that residents were probably breaking up large quantities of marijuana into smaller packages to distribute. *Id.* On July 10, Frick found in two white trash bags an Amazon package to Teresa and three baggies that field tested positive for marijuana. *Id.* at 11. Baggies with residue again suggested marijuana distribution. *Id.* On July 17, Frick retrieved two black garbage bags containing a paper with Mandracchia's name, a vape cartridge that field tested positive for marijuana, and packages for two THC products. *Id.* at 12. Distributors, Frick knew, often buy products like vape cartridges in states that have legalized marijuana to sell in states like Iowa that haven't. *Id.* Each time Frick collected evidence,

he transported it to the MINE Task Force office where it was secured until turned over to Urbandale Police evidence custodians. *Id.* at 11–12.

Officer Frick applied for a search warrant for the 38th Street residence based on the evidence he discovered in the trash bags. *Id.* at 1. The execution of the search warrant resulted in charges for possession with intent to deliver and tax stamp violations. D0013 (Amble FECR372327) D0009 (Mandracchia FECR372333) Trial Info. (08/25/2023).

Amble and Mandracchia moved to suppress the evidence, arguing that the warrantless search of the trash containers placed outside for collection violated their state constitutional rights. D0016 (Amble FECR372327) Mot. Suppress (09/06/2023); D0018 (Mandracchia FECR372333) Mot. Suppress (09/13/2023). A Des Moines ordinance governs trash collection:

> No person, unless pursuant to contract with the city permitting that person to collect and remove rubbish and refuse or unless that person is a city employee acting under the direction of the city council and the city manager, shall collect or remove any rubbish or refuse which has been deposited or placed by another person on the parking or curb along the roadway adjoining the latter's premises for collection by the city as provided in city ordinances.

Des Moines City Ordinance 98-54(6), *available at* https://perma.cc/PF7V-PVDG. Under the city's government, the chief of police acts under the

direction of the city manager, who acts under the direction of the city council. City of Des Moines, Council/Manager Ward Form of Government, *available at* https://perma.cc/ZL9A-2P58.

The city also sets guidelines for collecting trash. "Solid waste will only be collected from a residential premises if it is placed for collection in a city-owned container billed to that residence . . . ." Des Moines City Ordinance 98-54(3)(i). "[R]esidents desiring to have solid waste collected by the city shall cause it to be deposited upon the parking or terrace adjacent to and within approximately 18 inches of the near edge of the roadway in front of their premises . . . ." *Id.* at Sec. 98-54(3)(a). The City of Des Moines has a right-of-way in a "border area" between lot lines/property lines/city sidewalks and the street. *Id.* at Sec. 102-1; *see also* Right of Way Management, City of Des Moines Engineering Department, https://perma.cc/ZPX4-GTLF. "Property owners may not . . . place objects within the City's right-of-way." *Id.* An exception to the prohibition against placing objects in the border area or right-of-way is made for city-owned waste collection containers. Des Moines Ordinance 102-2(a).

Defendants argued that the Legislature usurped the judiciary's role to "decide constitutional questions" by responding to *Wright* with section 808.16. D0016 (Amble FECR372327) at 2; D0018 (Mandracchia

FECR372333) at 2. The district court found that usurpation in Iowa Code section 808.16, passed responsively to *Wright*. Iowa Code § 808.16. Defendants asked the district court to conclude that section 808.16 is unconstitutional so that information obtained by the trash grabs could not provide probable cause for the search warrant. D0016 (Amble FECR372327) at 2; D0018 (Mandracchia FECR372333) at 2.

The State resisted the motions to suppress given police compliance with the presumptively constitutional section 808.16. D0020 (Amble FECR372327) D0022 (Mandracchia FECR372333) Resistance Mot. Suppress (10/10/2023). The parties appeared for a hearing before the district court on October 11, 2023. D0024 (Amble FECR372327) D0026 (Mandracchia FECR372333) at 1. Defendants conceded for the district court that if the seizures and searches of garbage outside for collection were valid, probable cause existed to support the search warrants. *See* Mot. Suppress Tr. at 13:24–15:8 ("So trash rips, good; warrant, good. Trash rips, not good, everything gets excluded.")

The district court agreed with Defendants that the searches were unreasonable, holding section 808.16 unconstitutional in its entirety:

> It is clear from a plain reading of the statute that the legislature intended to do far more than simply clarify the property rights of a resident in his or her garbage . . . [i]t addressed what is or is not a

> citizen's reasonable expectation of privacy, what are to be considered constitutionally protected papers and effects, and dictates when a warrantless search can occur.

Id. at 5–6. The district court reasoned that the Legislature cannot enact a statute responding to a constitutional question already decided by this Court. *Id.* at 6–7. The district court explained that constitutional interpretation is solely within the purview of the courts. *Id.* at 6. Having thus set aside section 808.16 as unconstitutional, the district court explained that the case fits "squarely within the holdings of *Wright* and its progeny," and that the trash pulls were unconstitutional. *Id.* at 7. On November 13, 2023, the district court granted Defendants' motions and suppressed the evidence obtained by the warrant. *Id.*

The State moved to reconsider, arguing that the garbage seizures and searches here were not prohibited by *Wright*, even absent section 808.16, but if they were, *Wright* should be overruled. D0027 (Amble FECR372327) D0025 (Mandracchia FECR372333) Mot. Reconsider at 1–2 (11/28/2023). The State also requested to reopen the record to expand on details about the MINE Task Force and its agreement with Des Moines. *Id.* at 2. The district court denied that request. D0037 (Amble FECR372327) D0039 (Mandracchia FECR372333) Order Denying Mot. Reconsider (11/28/2023).

This Court granted discretionary review and stayed proceedings below pending the outcome of this appeal. Order (1/18/2024).

ARGUMENT

I. Iowa Code section 808.16 does not violate the Iowa Constitution, and the trash pull was legal.

Preservation of Error

Defendants preserved error on their constitutional challenges by filing motions to suppress below. D0016 (Amble FECR372327); D0018 (Mandracchia FECR372333). The State preserved error by resisting them. D0020 (Amble FECR372327); D0022 (Mandracchia FECR372333).

Standard of Review

Review of constitutional questions is de novo. *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, 975 N.W.2d 710, 721 (Iowa 2022). This Court "is the final arbiter of the meaning of the Iowa Constitution." *Wright*, 961 N.W.2d at 402.

To review a ruling on a motion to suppress, the Court makes an "independent evaluation of the totality of circumstances as shown by the entire record." *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001). The court grants "considerable deference to the trial court's findings regarding the credibility of witnesses, but [is] not bound by them." *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004).

Merits

Wright explained that the positive law sets expectations for privacy under the Iowa Constitution, and the district court erred by interpreting *Wright* as instead constitutionalizing the then-existing positive law. Interpreted that way, *Wright* would "suggest a law trapped in amber." *United States v. Rahimi*, 602 U.S. --, 2024 WL 3074728, at *6 (June 21, 2024). But *Wright* did not mandate that result. Instead, it established a positive law framework through which the Legislature could act to carefully balance Iowans' rights with law enforcement needs.

The Iowa Constitution does not prohibit the Legislature from enacting legislation relating to searches and seizures. Indeed, *Wright*'s positive-law approach to adjudication requires it. 961 N.W.2d at 412 n.5. The Iowa Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . ." Iowa Const. art. I, § 8. And the Iowa Constitution is "the supreme law of the State, and any law inconsistent therewith, shall be void." Iowa Const. art. XII, § 1.

> The people, then, have vested the legislative authority, inherent in them, in the general assembly.
>
> . . . . .

> Thus, it seems clear by logical deduction, and upon the most abundant authority, that this court has no authority to annul an act of the legislature unless it is found to be in clear, palpable and direct conflict with the written constitution.

Garrison v. New Fashion Pork LLP, 977 N.W.2d 67, 85 (Iowa 2022) (quoting *Stewart v. Bd. of Supervisors*, 30 Iowa 9, 18–19 (1870)).

Statues generally are "cloaked with a presumption of constitutionality" that must be rebutted with proof of "unconstitutionality beyond a reasonable doubt." *AFSCME Iowa Council 61 v. State*, 928 N.W.2d 21, 31 (Iowa 2019) (quoting *State v. Seering*, 701 N.W.2d 655, 661 (Iowa 2015)). The challenger must refute every reasonable basis on which the statute could be found constitutional, and if it "is capable of being construed in more than one manner, one of which is constitutional, [this Court] must adopt that construction." *Id.* Legislation affecting property rights is traditionally reviewed deferentially. *Garrison*, 977 N.W.2d at 85. The Court's role is "to 'interpret our constitution consistent with the text given to us by our founders,' and to 'give the words used by the framers their natural and commonly-understood meaning' in light of the 'circumstances' at the time of adoption." *State v. Burns*, 988 N.W.2d 352, 360 (Iowa 2023) (citations omitted).

When reviewing Iowa statutes, certain canons of construction are black letter law. Iowa Code chapter 4 provides rules for the construction of Iowa statutes. "In enacting a statute, it is presumed that [c]ompliance with the Constitutions of the state . . . is intended." Iowa Code § 4.4(1). "It is presumed that . . . [a] just and reasonable result is intended." *Id.* § 4.4(3). And the "[p]ublic interest is favored over any private interest." *Id.* § 4.4(5). Iowa's laws are also presumed severable. *Id.* § 4.12.

The district court erred when it construed Iowa Code section 808.16 as conflicting with article I, section 8. Failing to accord proper deference to the Legislature, the district court set aside as unconstitutional a valid law. In its analysis, the district court identified three parts in section 808.16 that it viewed as the Legislature overruling the supreme court on constitutional issues: "[section 808.16] addressed what is or is not a citizen's reasonable expectation of privacy, what are to be considered constitutionally protected papers and effects, and dictates when a warrantless search can occur." D0024 (Amble FECR372327) D0026 (Mandracchia FECR372333) at 6. But none of those sections conflict with *Wright*. And to the extent the law may be interpreted either to conflict or not to conflict with the Iowa Constitution, the statute must be interpreted to avoid such a conflict. *AFSCME Iowa Council 61*, 928 N.W.2d at 31; Iowa Code § 4.4(1).

The district court did not acknowledge section 808.16(3), deeming garbage abandoned when set outside for collection, in its analysis setting aside the statute as unconstitutional. Void statutory provisions do not bring down the entire statute. *See* Iowa Code § 4.12 (providing that provisions of statutes are severable). Even if all three parts the district court found lacking are invalid, subsection (3) and the other remaining parts of section 808.16 still validly change the positive law consistent with *Wright*.

This Court reviews legislative enactments deferentially—and so too should it deferentially review section 808.16's constitutionality. Section 808.16 does not rewrite article I, section 8 or conflict with it in any way. Instead, the Legislature listened to this Court's admonishment in *Wright* and changed the positive law. With section 808.16 in effect, law enforcement officers here violated no provision of positive law by seizing and searching garbage left for collection. *Wright*'s interpretation of article I, section 8 does not require suppression of evidence found as a result.

Wright's interpretation of the Iowa Constitution does not protect the trash pull here—a trash pull performed without a reasonable expectation of privacy. Section 808.16 removed all positive-law bases supporting *Wright*'s application to these facts. The Court should thus reverse the district court's order suppressing evidence.

A. Garbage in Iowa outside for collection is abandoned, and law enforcement may seize or search it.

The Legislature followed *Wright* by enacting a statute changing the reasonable expectation of privacy for trash—and thus changing the now-existing positive law. "[T]he General Assembly has power to enact any kind of legislation it sees fit provided it is not clearly and plainly prohibited by some provision or the state or federal constitutions." *Knorr v. Beardsley*, 38 N.W.2d 236, 245–46 (Iowa 1949) (quoting *Dickinson v. Porter*, 35 N.W.2d 66, 71, 240 Iowa 393, 399 (Iowa 1948)). The Legislature answered whether a person abandons property by placing it outside in trash containers for collection—with a strong yes. Iowa Code § 808.16(3).

Contrast that with *Wright*, which in different circumstances found that there was, then, a reasonable expectation of privacy in Clear Lake. Clear Lake's ordinances made it "unlawful for any person to . . . take or collect any solid waste which has been placed out for collection on any premises, unless such a person is an authorized solid waste collector." *Wright*, 961 N.W.2d at 400 (cleaned up) (quoting Clear Lake, Iowa, Code of Ordinances § 105.11(4)). This Court explained that a police officer was not an authorized solid waste collector. And while not dispositive, that violation of local law was a key "form of evidence" limiting a "peace officer's authority to act without a warrant." *Id.* at 417.

Importantly, neither *Wright's* trespass rationale, nor its expectation-of-privacy rationale, applies to property that no longer belongs to a defendant. *Id.* at 415–16. Indeed, one issue in *Wright* was that the property owner "had not yet abandoned the property." *Id.* at 416. Section 808.16(3)'s change to the Iowa Code regarding abandonment should affect the result under a proper application of *Wright*. *Wright* itself, in recognizing the importance of the garbage in that case not yet being abandoned, understands the importance of abandoned property for analysis for an improper search or seizure under the Iowa Code. *Id.* at 415–16.

Wright held that an officer violates article I, section 8 if "without a warrant, the officer physically trespasses on protected property or uses means or methods of general criminal investigation that are unlawful, tortious, or otherwise prohibited." *Wright*, 961 N.W.2d at 416. Conduct that is "otherwise prohibited . . . includes means and methods of general criminal investigation that violate a citizen's reasonable expectation of privacy." *Id.* That means a law enforcement officer may not trespass. *Id.* at 412 n.5. *Wright* also holds a person has a reasonable expectation of privacy when the positive law supports such an expectation—for example, when the law explains that only an authorized trash collector can collect trash. *Id.* at 419. Both the trespass and expectation-of-privacy rationales are limited to a

defendant's effects. *Id.* at 415–17. But the property here is not fairly characterized as these Defendants' effects. Iowa Code § 808.16(3) ("Garbage placed outside of a person's residence for waste collection in a publicly accessible area shall be deemed abandoned property."). Seizure and search thus did not intrude on Defendants' property in a way that violates the Iowa Constitution. *Wright*, 961 N.W.2d at 415.

Wright concluded, given the evidence in the record and Clear Lake's ordinance, that garbage is not necessarily abandoned by setting it on the curb. *Id.* Trash on the curb was there, the court said, in a transfer of possession to the trash collector. *Id.* Title to the trash in Clear Lake, *Wright* reasoned, could only transfer to a trash collector. *Id.* So the garbage bags and their contents remained Wright's effects, protected against warrantless searches. *Id.*

Section 808.16(3) withdraws the legal premise that led to *Wright*'s result. Section 808.16(3) clarifies that, statewide, trash left out for collection in a publicly accessible area is abandoned. Iowa Code § 808.16(3). Property rights "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972); *accord Moore v. Harper*, 143 S. Ct. 2065, 2088 (2023). "Under

legislative home rule, the legislature retains the unfettered power to prohibit a municipality from exercising police powers, even over matters traditionally thought to involve local affairs." *City of Davenport v. Seymour*, 755 N.W.2d 533, 538 (Iowa 2008). The district court here read conflict into *Wright* and the Iowa Code when instead the two could be read in harmony. That lack of deference is error. *See Garrison*, 977 N.W.2d at 85 (requiring deference to legislative property rights enactments).

Wright itself anticipated that a changed positive-law premise could have changed whether a search or seizure is constitutional. And that comports with analysis under the United States Constitution's Fourth Amendment. Under that constitution, abandoned items are not protected from police seizure and search. *Abel v. United States*, 362 U.S. 217, 241 (1960); *see also Greenwood*, 486 U.S. at 37–41 (invoking abandonment principles to conclude a person has no expectation of privacy in trash left for collection outside the curtilage).

State cases say the same—the State may appropriate abandoned papers and effects without violating either state or federal constitutional prohibitions against unreasonable searches or seizures. *Burns*, 988 N.W.2d at 362 (applying the abandonment rule to DNA on a straw left behind at a restaurant); *Abel*, 362 U.S. at 241; *Greenwood*, 486 U.S. at 37–41. Even

personal effects as private as a journal are not protected when left behind. *State v. Barrett*, 401 N.W.2d 184, 189–90 (Iowa 1987). Nor are papers a defendant hoped to keep secret by hiding them on someone else's property protected under the Iowa Constitution. *State v. Flynn*, 360 N.W.2d 762, 766 (Iowa 1985). No person has title to abandoned property until it is found or taken—when title vests in the first finder. *See Abandonment of Tangible Personal Property*, 25 Am. Jur. Proof of Facts 2d 685 (West 2021) (originally published in 1981).

Applying those long-standing principles here, the first finder was law enforcement, thereby vesting those officers with title to the trash. One cannot trespass against oneself—a trespass crime or tort must be committed against the property of another. *See* Iowa Code § 716.7. There was no trespass because under section 808.16(3) law enforcement had the only property interest in the trash. Defendants' interests were extinguished when they set it on the curb. Iowa Code § 808.16(3). Viewed differently, a person has no standing to challenge a seizure or search of abandoned papers or effects. *State v. Bumpus*, 459 N.W.2d 619, 625 (Iowa 1990); *State v. Brooks*, 760 N.W.2d 197, 206 (Iowa 2009). Whether Defendants had no protected rights in the abandoned garbage, or no standing to challenge its seizure and search, the result is the same. Consistent with *Wright*, section

808.16(3)—changing the status of garbage set on a curb to abandoned—means that garbage is not entitled to article I, section 8 protection.

Disagreeing with that analysis, the district court facially enjoined enforcement of section 808.16. The district court saw section 808.16(3) as attempting to overturn *Wright* by redefining what qualifies as a person's "papers or effects" under article I, section 8. D0024 at 5–6; *see Carpenter v. United States*, 585 U.S. 296, 403 (2018) (Gorsuch, J., dissenting) (citing *Ex Parte Jackson*, 96 U.S. 727, 733 (Iowa 1877)) (explaining that a legislature may not declare something is not a person's effect for search purposes). But there is a better way to read the statute—and that way is consistent with both *Wright* and the Iowa Constitution. Section 808.16(3)'s second clause addressing papers and effects should be read as stating the constitutional result of the first clause deeming garbage on the curb abandoned. Article I, section 8 protects "The right of the people to be secure in their . . . papers and effects . . . ." Yet abandoned property is no longer a person's papers or effects. *See Wright*, 961 N.W.2d at 415 (noting the case would go the other way if the papers or effects did not belong to the defendant). *Burns*, *Barrett*, *Flynn*, and *Bumpus* also all confirm that a defendant will lose a search-and-seizure challenge involving abandoned property. *Burns*, 988 N.W.2d at 362; *Barrett*, 401 N.W.2d at 189–90;

Flynn, 360 N.W.2d at 766; *Bumpus*, 459 N.W.2d at 625. So a permissible, deferential, constitutional interpretation of the second clause of section 808.16(3) is that it's the Legislature's conclusion of applying this abandoned-property rule to the first clause deeming garbage placed for collection abandoned.

Explaining the constitutional result of garbage's change in status when placed on the curb—it is no longer an effect—is not an unconstitutional power grab. *See* William Baude & James Y. Stern, *The Positive Law Model of the Fourth Amendment*, 129 Harv. L. Rev. 1821, 1852 (2016) (explaining that one benefit of the positive law model of search-and-seizure law is "legislatures are better positioned to make up rules than courts"). The people, through the Legislature, frequently define property rights—what people can own, how they can transfer it, and how it may be taken away. *See e.g.*, Iowa Code § 6A.4 (eminent domain), § 321.45 (titles transfers for vehicles), § 558.72 (entities which may transfer property), ch. 561 (homesteads), § 626.80 (execution of sales at auction).

The Legislature and other governmental bodies routinely exercise this power to state when certain property is deemed "abandoned." *See, e.g.*, Iowa Code § 163.3D (seizure of abandoned animals permitted after one day's notice), § 321.90 (vehicle unclaimed after ten days is deemed

abandoned), § 457A.3 (unrecorded conservation easements "shall be deemed abandoned"), § 556G.1 (property left at dry-cleaners four months "presumed abandoned"); Des Moines Code of Ordinances § 102.5 (property left in street, alley, or public space "abandoned" is "declared a public nuisance").

None of those laws would suddenly violate article I, section 8 if that law also contained a statement that once abandoned, the personal property would not be a "paper or effect" for constitutional purposes. It is not a constitutional problem that section 808.16(3) first deems trash abandoned, then applies the established constitutional rule for abandoned property, and concludes that the trash is no longer a person's papers or effects for constitutional analysis. Inclusion of the conclusion is a tidy expression for those unfamiliar with the abandonment rule.

The district court construed section 808.16 to find a conflict with the Iowa Constitution—which is contrary to this Court's precedents and the Iowa Code. D0024 at 6. That is error. The section must be construed, if possible, in a way that is constitutional. *AFSCME Iowa Council 61*, 928 N.W.2d at 31; Iowa Code § 4.4. Indeed, the Legislature here acted in good faith to fix a problem with ongoing law enforcement efforts after *Wright*. Rather than be chided for its attempt to conform law enforcement

necessities to the Iowa Constitution, the Legislature's efforts to carefully fit its laws within frameworks that this Court establishes should be rewarded with the proper deference.

Under article I, section 8 as interpreted by *Wright*, 961 N.W.2d at 415, seizure and search of the garbage here was legal.

B. Iowa's public policy is that citizens have no expectation of privacy in garbage.

Section 808.16 in its full text also supports the garbage seizure and search's legality. Beginning with the expectation-of-privacy, Iowa Code section 808.16(1) explains that Iowa public policy does not recognize a reasonable expectation of privacy in discarded trash. Iowa Code § 808.16(1). Also, section 808.16(2) instructs that no person should construe a municipal ordinance addressing waste collection to give them an expectation of privacy in garbage once it is outside for collection. *Id.* at 808.16(2). Finally, law enforcement officers may search garbage left for collection without a warrant. *Id.* at 808.16(4). In these three ways, the Legislature squarely addressed concerns about reasonable expectations of privacy. After all, when a highly publicized legislative effort results in a change in law it cannot be reasonable to ignore that change.

Under the United States Constitution, Fourth Amendment protections are tied to whether a person has a "reasonable expectation of

privacy." *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring). Article I, section 8 includes that principle. *Wright,* 961 N.W.2d at 417–18. A reasonable expectation of privacy exists if a defendant (1) "sought to preserve something as private" and (2) that privacy expectation is "one that society is prepared to recognize as reasonable." *Burns*, 988 N.W.2d at 361 (citations omitted). Both criteria must be met before a court concludes that a person had a reasonable expectation of privacy. *Wright*, 961 N.W.2d at 419.

When the Legislature speaks on an issue, it establishes the parameters of public policy. *Claude v. Guaranty Nat. Ins. Co.*, 679 N.W.2d 659, 663 (Iowa 2004). The Court looks to sources that include the Constitution, statutes, and judicial decisions but does not rely on " 'generalized concepts of fairness and justice' or [its] determination of what might be most just in a particular case." *Id.* "Statutes do not serve as constitutional definitions but provide [a court] with the most reliable indicator of community standards to gauge the evolving views of society important to [its] analysis." *Griffin v. Pate*, 884 N.W.2d 182, 198 (Iowa 2016) (citations omitted).

The Legislature clarified public policy and what could reasonably be expected to remain private by enacting section 808.16 after *Wright*. Public

policy is the Legislature's purview. *Seymour*, 755 N.W.2d at 538. Speaking on behalf of "we the people," the Legislature changed the positive law. Now, the law reflects both *Wright*'s holding that a constitutional privacy interest exists in effects but changes the background positive law as to when that privacy interest ends. That policy statement, combined with the specific authorization of trash collection by peace officers in section 808.16(4), as well as the prohibition against municipalities limiting law enforcement searches, adds positive law to expectation-of-privacy analysis in *Wright*.

Thus, to the extent *Wright* would have precluded a trash search on a legislative blank slate, section 808.16 changes *Wright's* expectation-of-privacy result. Wright "had an expectation based on positive law that his garbage bags would be accessed only by a licensed collector under contract with the city," and "that it would be unlawful for others to access his trash," so the Court concluded that he had a reasonable expectation of privacy. *Wright*, 961 N.W.2d at 419; *see also Kuuttila*, 965 N.W.2d at 486 (concluding that a similar Nevada municipal ordinance gave a defendant a reasonable expectation of privacy).

Wright explored Justice Gorsuch's *Carpenter* dissent which, if taken to its logical conclusion, supports the State's position here. Justice Gorsuch criticized as "unbelievable" the United States Supreme Court's reasonable-

expectation-of-privacy analysis in *Greenwood*, 486 U.S. at 37, which allowed warrantless searches and seizures of garbage left outside a home's curtilage. 585 U.S. at 394–95. Key to his criticism was that *Greenwood* did not defer to California protections of personal property rights in discarded garbage "as evidence of people's habits and resalable expectations of privacy." *Id.* But section 808.16 changes Iowa's positive law to the opposite direction as California's. So applying Justice Gorsuch's reasoning would lead to deferring to the Legislature here.

To recap, Iowa's current law does not recognize property owners' rights in garbage on the curb, or restrictions on law enforcement seizing and searching it. The Legislature enacted positive law proclaiming property owners expect no privacy in discarded trash. Iowa Code §§ 808.16(1), (2). It also enacted a law explaining that curb-side discarded trash is accessible to peace officers. *Id.* at 808.16(4). Going further, it expressly preempted municipal ordinances that regulate waste management for purposes other than public health and cleanliness, such as to "codify societal expectations of privacy." *See Wright*, 961 N.W.2d at 435 (Christensen, C.J., dissenting); Iowa Code § 808.16(2).

And the Legislature declared trash on the curb is abandoned property. Iowa Code § 808.16(3). After section 808.16, Defendants had no

positive-law support for an expectation of privacy in their discarded garbage. *Cf. Wright*, 961 N.W.2d at 419 (noting that the defendant could expect based on positive law that "his garbage bags would be accessed only by a licensed collector . . . [and] it would be unlawful for others to access his trash.")

The Court should thus conclude that subsequent positive-law developments, enacted in section 808.16, establish there is no reasonable expectation of privacy in garbage set outside for collection.

C. Law enforcement committed no trespass here.

Officer Frick did not trespass when collecting the garbage bags. As a member of the MINE Task Force, he was functionally an employee acting under the direction of the Des Moines police chief, who acts under the direction of city council and city manager. City of Des Moines, Council/Manager Ward Form of Government, https://perma.cc/ZL9A-2P58. So collecting the trash did not violate the ordinance at issue, which allows "a city employee acting under the direction of the city council and the city manager" to collect or remove trash as provided in city ordinances. Des Moines City Ordinance 98-54(6).

Officer Frick also did not trespass to access the container because the City of Des Moines has a right-of-way adjacent to city streets. *Id.* at Sec.

102-1. The city also provides the only acceptable bins for trash collection. *Id.* at 98-54(3)(i). So, even if damage is not required to commit trespass to chattels—as four justices in *Bauler* seem to agree—Officer Frick did not commit a trespass to chattels by opening the bin. *See State v. Bauler*, No. 22-1232, --- N.W.3d ---, 2024 WL 3209908 at *10–11 (Iowa June 28, 2024) (reasoning that "intermeddling" or "intentionally bringing about a physical contact with" someone's personal property is a trespass to chattels); *Id.* at *27 (McDermott, J., dissenting) (agreeing with the "intermeddling" theory of trespass to chattels). This also sets apart this case from *Wright*, given the different treatment for curbside trash under Des Moines and Clear Lake municipal ordinances.

The bin was city property, did not belong to either Defendant, and it was on property to which the city has a right-of-way; it was thus not subject to trespass.

D. Section 808.16 does not purport to amend the Iowa Constitution by allowing police to conduct warrantless trash pulls.

The Iowa General Assembly worked within *Wright*'s framework to conform law enforcement trash seizures and searches with the Iowa Constitution. The Legislature addressed "when a warrantless search can occur" for purposes of trespass. Iowa Code § 808.16(4). The Legislature did

not purport to amend the Iowa Constitution, as the district court seemed to conclude. D0024 at 6–7. Instead, the Legislature passed a law that follows *Wright* to answer whether an officer invalidates a warrantless search by committing a trespass: "In determining whether an officer's conduct is unlawful, tortious, or otherwise prohibited," courts try "to discern and describe existing societal norms" by examining "democratically legitimate sources of [positive] law," including "statutes, rules, orders, ordinances, judicial decisions, etc." *Wright*, 961 N.W.2d at 416 (quoting *Carpenter*, 138 S. Ct. at 2265, 2268 (citations and quotations omitted)). In doing so, the Court aims to identify "the proper scope of law enforcement authority." *Id.*

To address the trespassory *Wright* rationale, the General Assembly first limited the permissible scope of municipal ordinances governing waste collection to "promoting public health and cleanliness." Iowa Code § 808.16(2). *Second*, the Legislature authorized peace officers' warrantless seizure and search of trash "placed outside of a person's residence for waste collection in a publicly accessible area." Iowa Code § 808.16(4).

Together, those laws preempt local ordinances that would make it a trespass for law enforcement to undertake a warrantless collection and search of garbage left outside for collection. *See* Iowa Code § 4.7 (instructing that special statutes prevail over contrary provisions of general

statues); *Goodell v. Humboldt Cnty.*, 575 N.W.2d 486, 492 (Iowa 1998) (providing local laws may not regulate in a manner contrary to state statutes). As a result, a court can no longer conclude that by grabbing garbage an "officer engaged in means and methods of general criminal investigation that were unlawful and prohibited." *Kuuttila*, 965 N.W.2d at 486; *see also Wright*, 961 N.W.2d at 412 n.5 (explaining "what constitutes a trespass can change over time," and that property interests can be determined by "existing rules or understandings that stem from an independent source such as state law"). There was no "trespassory" seizure of discarded DNA in *Burns*, 988 N.W.2d at 366, because a statute prohibiting obtaining genetic samples for testing without consent explicitly exempted law enforcement investigations seeking to identify individuals. The Legislature properly passed section 808.16 to comply with *Wright's* framework by changing the positive law.

For curbside garbage seizures and searches, the Legislature said explicitly that police officers do not need a warrant. Iowa Code § 808.16(4). The Legislature thus clarified that, even if an average citizen may not collect abandoned garbage, law enforcement officers may do so. That addresses the part of the lead *Wright* opinion that most concerned the dissenting justices:

> Within the meaning of article I, section 8, an officer acts unreasonably when, without a warrant, the officer physically trespasses on protected property or uses means or methods of general criminal investigation that are unlawful, tortious, or otherwise prohibited. . . . Otherwise prohibited conduct includes means and methods of general criminal investigation that violate a citizen's reasonable expectation of privacy as articulated in our cases adopting the *Katz* standard.

Wright, 961 N.W.2d at 416; *see id.* at 450–52 (Christensen, C.J., dissenting) (disputing that law enforcement officers are prohibited from investigation techniques that would be illegal for non-law-enforcement actors); *id.* at 452–53 (Waterman, J., dissenting) (same); *id.* at 461–63 (Mansfield, J., dissenting) (same). The Chief Justice block quoted a supporting parenthetical from the plurality opinion:

> [A] court should ask whether government officials have engaged in an investigative act that would be unlawful for a similarly situated private actor to perform. That is, stripped of official authority, has the government actor done something that would be tortious, criminal, or otherwise a violation of some legal duty? Fourth Amendment protection, in other words, is warranted when government officials either violate generally applicable law or avail themselves of a governmental exemption from it.

Id. at 450 (quoting Baude & Stern, *supra*, 129 Harv. L. Rev. at 1825–26). The plurality opinion walked back that language in a footnote, explaining it only meant that law enforcement cannot trespass when performing a

warrantless search. *Wright*, 961 N.W.2d at 412 n.5; *see Bauler*, 2024 WL 3209908 at *8 (explaining *Wright*).

Central to the positive-law approach to constitutional search-and-seizure analysis is the principle that no exceptions to the general law may be made for peace officers. Baude & Stern, 129 Harv. L. Rev. at 1846. The law governing one governs all, so the government may not exempt itself from generally applicable laws to allow searches or seizures. *Id.* The professors note that at the founding, the federal government was relatively small, and even in the states, "the modern, professionalized police force was unknown . . . ." *Id.* at 1842.

This Court rejected Baude and Stern's no-exceptions-for-law-enforcement principle in *State v. Burns*, 988 N.W.2d at 366. A law-enforcement exception there drove the analysis and result. *Id.* Consistent with *Burns*, the section 808.16(4) law-enforcement exception is valid. With respect to DNA, this Court examined section 729.6(3), which constrains the collection and use of genetic information. *Burns*, 988 N.W.2d at 366. The statute exempts law enforcement's efforts to "identify an individual in the course of a criminal investigation." Iowa Code § 729.6(3)(c)(2). In response to Burns's argument that the statute should be construed to require a warrant, this Court explained, "As written, paragraph (c)(2) includes no

mention of a 'warrant.' If the legislature had intended it to require a warrant, the legislature could easily have so stated." *Burns*, 988 N.W.2d at 366.

This Court should read *Wright* to be consistent with *Burns*, which explained that the section 729.6(3)(c)(2) exception for law enforcement could not have saved the DNA identification because laws must be generally applicable under the positive-law approach. Hewing to the rejected no-exceptions-for-law-enforcement principle would lead to the parade of horribles the *Wright* dissenters identified. As the Court has already rejected it, Baude and Stern's antidiscrimination principle of positive-law search-and-seizure theory is not a part of the Iowa Constitution's article I, section 8.

This Court should clarify that *Wright* does not go so far as defendants here claim. *See Burns*, 988 N.W.2d at 366 (allowing a law-enforcement exemption to the generally applicable rule). Positive law can exempt certain police action from general prohibitions. For example, peace officers need not obey traffic laws when responding to emergencies. Iowa Code § 321.231. When positive law provides an exemption for peace officers, evidence obtained pursuant to the exemption is admissible.

II. If Iowa Code section 808.16 conflicts with *State v. Wright*, the Court should overrule it.

Preservation of Error

The State preserved error by asking to overrule *Wright* in its motion to reconsider. D0027 (Amble FECR372327) D0025 (Mandracchia FECR372333) at 1–2.

Standard of Review

Review of constitutional questions is de novo. *Bauler*, 2024 WL 3209908 at *8.

Merits

A. *Wright* should be overruled because it is incorrect.

The Legislature acted to fix the problems this Court identified in *Wright* to ensure that Iowa does not "stand[] alone in holding discarded trash is an 'effect' entitled to constitutional protection." *See Kuuttila*, 965 N.W.2d at 487–90 (Christensen, C.J., dissenting). To that end, the Legislature followed *Wright*'s framework to create rules that should work for law enforcement after *Wright*. But if this Court agrees with the district court that the Legislature cannot enact laws under *Wright* to allow law enforcement to do its job, then *Wright* should be overturned.

If *Wright* is as broad as the district court believed, then the reasons to overrule *Wright* were compelling from the moment it issued. *See Wright,*

961 N.W.2d at 416; *see id.* at 429–52 (Christensen, C.J., dissenting) (cataloguing reasons not to give constitutional protections to garbage left on the curb); *id.* at 452–58 (Waterman, J., dissenting) (same); *id.* at 458–65 (Mansfield, J., dissenting) (same). Those compelling reasons did not fade the following term. *See Kuuttila*, 965 N.W.2d at 487–90 (Christensen, C.J., dissenting) (collecting cases).

The State interprets *Wright* consistent with historical antecedents, the positive law, and longstanding constitutional principles to conform Iowa law with the Iowa Constitution. But if that interpretation is wrong and this Court reads *Wright* to stop law enforcement from following Iowa law or to hold that, despite state law to the contrary, abandoned trash on a curb gives the abandoner a reasonable expectation of privacy, then *Wright* should be overturned. Such a broad reading of *Wright* would lead to the harms *Wright*'s dissenters identified. And the State does not have much to add to those forceful dissents, especially not to criticisms of the novel standard—was an "officer engaged in means and methods of general criminal investigation that were unlawful and prohibited." *Kuuttila*, 965 N.W.2d at 486.

This legislative change gives this Court an opportunity to reassess *Wright* in the context of the changes section 808.16 adds to the mix—that

garbage seizures and searches are not trespasses, garbage on the curb is abandoned, municipalities cannot regulate privacy interests in trash collection, and Iowans expect no privacy in their garbage left for collection. No trash pull will violate article I, section 8 while section 808.16 remains good law.

The lengthy list of authorities cited by the *Wright* plurality and concurring opinion do not support that discarded items were historically protected from police or private-actor search or seizure at the time of the Iowa Constitution's enactment. Indeed, "discarded trash was fair game for searches by police and private citizens alike when our Federal Constitution was enacted." *Wright*, 961 N.W.2d at 454 n.23 (Waterman, J., dissenting).

One dissenter predicted that *Wright* "will have a short life as a precedent." *Wright*, 961 N.W.2d at 464 (Mansfield, J., dissenting). The Legislature's quick action may have rendered that prediction moot. But not if this Court extends *Wright* to preclude enforcing Iowa laws. The positive law has changed and even under *Wright*, the trash rip at issue should be held lawful.

But if this Court concludes that no part of section 808.16 survives to save the underlying seizure and search of the trash here, and would otherwise affirm that the seizure and search was illegal under *Wright*, the

State asks the Court to revisit *Wright* and its progeny *Hahn*, 961 N.W.2d 370, and *Kuuttila*, 965 N.W.2d 484.

Even barring those conditions, reconsidering the broadest interpretation of *Wright* is sensible. *Wright*'s dissenters identified problems with the standard prohibiting searches and seizures when an "officer engaged in means and methods of general criminal investigation that were unlawful and prohibited." *Kuuttila*, 965 N.W.2d at 486. *Wright*'s plurality responded to the dissents' primary concern in a footnote:

> The dissents are directed at monsters of their own making. The dissenters argue that the court's holding—that "if a private citizen can't do it, the police can't do it either"—is not supported by text or history. Except that is not what we hold. We hold that article I, section 8 prohibits an officer engaged in general criminal investigation from conducting a search or seizure that constitutes a trespass on a person's house, papers, or effects without first obtaining a warrant. None of the dissenters disagree that article I, section 8, as originally understood, prohibited warrantless trespassory searches and seizures. The dissenters fail to recognize that what constitutes a trespass can change over time without changing the original meaning of article I, section 8.

Wright, 961 N.W.2d at 412 n.5. That footnote tries to assuage concerns that the plain meaning of the new Iowa constitutional standard prohibits traffic stops, *Terry* stops, entries after illegal activity is perceived, and many other standard law enforcement practices. Even though *Wright*'s plurality

assured us that *Wright's* new approach does not prohibit those warrantless searches, the language reappeared the following term in *Kuuttila*, 965 N.W.2d at 486. District courts could use clarification on this point—and if the clarification is that *Wright* preempts the Legislature from enacting reasonable laws concerning property rights and searches, it should be reconsidered.

B. Stare decisis should not prevent reconsidering *Wright*.

Wright is a constitutional decision, meaning stare decisis has less force than in other contexts. *Planned Parenthood of the Heartland*, 975 N.W.2d at 733. Barring the difficult task of amending the constitution, this Court is the only institution that can remedy its mistake. *Id.* (citing Tyler J. Buller & Kelli A. Huser, *Stare Decisis in Iowa*, 67 Drake L. Rev. 317, 322 (2019)). This Court has recently overturned some cases that introduced errors into its jurisprudence. *See*, *e.g.*, *id.*; *Burnett v. Smith*, 990 N.W.2d 289, 307 (Iowa 2023); *Garrison*, 977 N.W.2d at 85; *State v. Kilby*, 961 N.W.2d 374 (Iowa 2021).

Finally, *Wright* overruled an earlier published Iowa Court of Appeals decision, which also makes it a shallow-rooted variety of recent constitutional decision. *Planned Parenthood of the Heartland*, 975 N.W.2d at 733.

The State asks the Court to revisit *State v. Wright* and overrule it.

CONCLUSION

For the above reasons, the State asks that the Court reverse the district court's suppression order and remand for further proceedings.

REQUEST FOR ORAL SUBMISSION

The district court's conclusion that section 808.16 is unconstitutional merits evaluation at oral argument.

Respectfully submitted,

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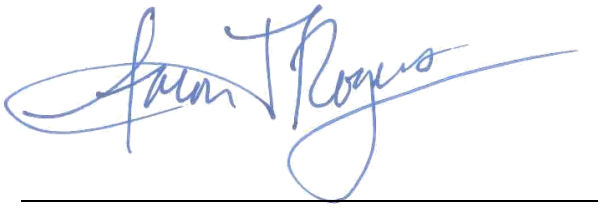

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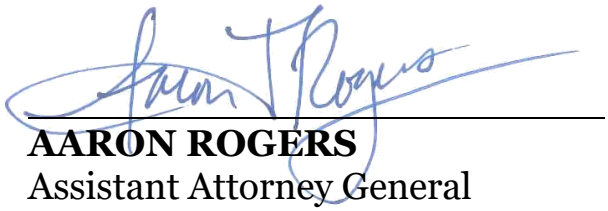

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